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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957
NUMBER 66

JEREMIAH REEVES, JR.,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

BRIEF AND ARGUMENT OF RESPONDENT

On Writ Of Certiorari To The
Supreme Court Of Alabama

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BRIEF AND ARGUMENT OF RESPONDENT

I.

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported as follows:

Jeremiah Reeves, Jr., vs. State of Alabama, 264 Ala. 476, 88 So. 2d 561.

II.

JURISDICTION

The judgment of the Circuit Court of Montgomery County was affirmed by the Supreme Court of Alabama on June 21, 1956. The time for filing petition for writ of certiorari was extended to November

17, 1956, by order of Mr. Justice Black, dated September 4, 1956. The writ of certiorari and motion to proceed **in forma pauperis** were granted on January 14, 1957. The jurisdiction of this Court is invoked under 28 U S C Section 1257 (3), Defendant having asserted in the Courts below rights, privileges and immunities conferred by the Constitution of the United States.

III.

QUESTIONS PRESENTED

The petition in this case presents the following questions:

1. On matter of the indictment:

   A. When Defendant's first conviction has been reversed because of the introduction of statements in the nature of a confession, must the Defendant be re-indicted and re-arraigned?

   B. On Defendant's second trial, after plea to the merits, may he inquire into the nature and extent of evidence before the Grand Jury when statutes require pleas in abatement to be filed before plea to the merits?

   C. Where statutes require pleas in abatement to be filed before plea to merits, has Defendant been denied due process when, at arraignment, through counsel of his own selection, he entered a plea of not

guilty and not guilty by reason of insanity; then, after the case was reversed, on the second trial, his motion to be allowed to withdraw his plea to the merits and to file a motion to quash the indicament because of alleged systematic exclusion of Negroes from the Grand Jury was denied by the Court?

2. On matter of the jury:

A. Does due process require proportional representation of races on jury panels?

or

Where population of the county is about 60% white and 40% Negro, and testimony shows that Negroes are regularly on venires drawn for grand and petit juries — in fact, there were six or seven then sitting in Court as a part of the venire for the day; that the jury commissioners had revised the jury roll only five months earlier, using information from telephone directory, city directory, voters' list, Civic Betterment Society (Negro), civic clubs, labor organizations, NAACP, individuals, and their personal knowledge; that they did not exclude Negroes, but had made special efforts to find those who were qualified, both white and Negro, has the Defendant

been denied due process when the trial court refuses to quash the venire after a full hearing of this evidence from thirty witnesses?

B. Has the Defendant been denied due process when the Court, at the request of the Solicitor, qualified the venire by asking — among other questions — if any juror was a member of NAACP?

3. On matter of public trial:

A. Has the Defendant been denied a public trial under the Fourteenth Amendment when the court, under constitutional and statutory authority, excluded the public with the exception of Defendant and his counsel, court officials, attorneys, members of the press, radio, television and other news gathering services, uniformed officers, members of the bar, Defendant's pastor, members of the family and relatives of the Defendant?

IV.

STATUTES INVOLVED

In addition to those set out in Defendant's brief on pages 4, 5, 6 and 7.

Title 30, Section 3, Code of Alabama 1940:

The following persons are exempt from jury duty, unless by their own consent:

Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of the duties; the superintendent, physicians, and all regular employees of the Bryce hospital in Tuscaloosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such.

Title 30, Section 20, Code of Alabama 1940:

The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the jury commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given. Upon the completion of the roll the jury commission shall cause to be prepared plain white cards all of the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the person whose name has been placed on the jury roll; writing or printing but one person's name, occupation, place of residence and of business on each card. These cards shall be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe or vault in the office of the probate judge, and if there be none in that office, the jury commission shall deposit it in any safe or vault in the court house to be designated on the minutes of the commission; and one of said keys thereof shall be kept by the presi-

dent of the jury commission. The other of said keys shall be kept by a judge of a court of record having juries, other than the probate or circuit court, and in counties having no such court then by the judge of the circuit court, for the sole use of the judges of the courts of said county needing jurors. The jury roll shall be kept securely and for the use of the jury commission exclusively. It shall not be inspected by any one except the members of the commission or by the clerk of the commission upon the authority of the commission, unless under an order of the judge of the circuit court or other court of record having jurisdiction.

Title 30, Section 21, Code of Alabama 1940:

The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of

sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so.

Title 30, Section 24, Code of Alabama 1940:

The jury commission is charged with the duty of seeing that the name of every person possessing the qualifications prescribed in this chapter to serve as a juror and not exempted by law from jury duty, is placed on the jury roll and in the jury box. The jury commission must not allow initials only to be used for a juror's name but one full Christian name or given name shall in every case be used and in case there are two or more persons of the same or similar name, the name by which he is commonly distinguished from the other persons of the same or similar name shall also be entered as well as his true name. The jury commission shall require the clerk of the commission to scan the registration lists, the lists returned to the tax assessor, any city directories, telephone directories and any and every other source of information from which he may obtain information, and to visit every precinct at least once a year to enable the jury commission to properly perform the duties required of it by this chapter. * * * * * .

Title 30, Section 52, Code of Alabama 1940:

In civil and criminal cases, either party shall have the right to examine jurors as to their qualifications, interest, or bias that would affect the trial of the case, and shall

have the right, under the diection of the court, to examine said jurors as to any matter that might tend to affect their verdict.

Title 30, Section 63, Code of Alabama 1940:

Whenever any person or persons stand indicted for a capital felony, the court must, on the first day of the session or as soon as practicable thereafter, make an order commanding the sheriff to summon not less than fifty nor more than one hundred persons, including those drawn on the regular juries for the week set for the trial of the case, and shall then in open court draw from the jury box the number of names required, with the regular jurors drawn for the week, set for the trial, to make the number named in order, and shall cause an order to be issued to the sheriff to summon all persons therein named to appear in court on the day set for the trial of the defendant, and must cause a list of the names of all the jurors drawn for the week in which the trial is set, and those drawn as provided in this section, together with a copy of the indictment, to be forthwith served on the defendant, by the sheriff, at least one entire day before the day set for the trial, and the defendant shall not be entitled to any other or further notice of the jurors drawn for his trial nor of the charge of indictment upon which he is to be tried. If the persons summoned as jurors fail to appear, or if the panel is exhausted by challenges, neither the defendant nor his counsel is entitled to a list of the persons summoned to supply their places.

Title 30, Section 64, Code of Alabama 1940:

> On the day set for the trial if the cause is ready for trial, the court must inquire into and pass upon the qualifications of all the persons who appear in court in response to the summons to serve as jurors, and shall cause the names of all those whom the court may hold to be competent jurors to try the defendant or defendants to be placed on lists, and if there is only one defendant on trial shall require the solicitor to strike off one name and the defendant strike off two names, and in case there are two or more defendants on trial, the solicitor shall strike one and every defendant shall strike one name, and they shall in this manner contiue to strike names from the list until only twelve names remain thereon. The twelve thus selected shall be sworn and empaneled as required by law for the trial of the defendant or defendants.

V.

STATEMENT OF THE CASE

The Defendant, Jeremiah Reeves, Jr., was indicted by the Grand Jury of Montgomery County, Alabama, for the offense of rape. He was tried before a jury upon a plea of not guilty and the trial resulted in a conviction. The case was appealed to the Supreme Court of Alabama where it was affirmed and certiorari was granted by the Supreme Court of the United States, where the cause was reversed. (**Reeves vs. Alabama,** 348 U. S. 891, 99 L. Ed. 700). This is the second trial. This Court reversed the first con-

viction, per curiam, without opinion, citing **Canty vs. Alabama,** 309 U. S. 629, 84 L. Ed. 988, and **Vernon vs. Alabama,** 313 U. S. 547, 85 L. Ed. 1513. In Canty, the judgment was reversed without opinion or citation of authority; the Vernon case was reversed on authority of **Chambers vs. Florida,** 309 U. S. 227, 84 L. Ed. 716, and **White vs. Texas,** 310 U. S. 530, 84 L. Ed. 1342. In both cases, the Court reversed the conviction on one ground: the use of an illegally obtained confession.

On the first review of this case, the Defendant presented, ably briefed and argued, the use of statements in the nature of a confession, systematic exclusion of Negroes from the jury panel, and exclusion of the public from the trial. Since the two cases cited by the Court in reversing the first conviction deal only with the use of confessions, we feel that the Court felt satisfied with the system of selecting jurors and with the Court's authority and discretion in excluding the general public; however, we find the Defendant again urges both of these issues in his present petition.

Defendant was arraigned on November 15, 1952, and on that date pleaded not guilty and not guilty by reason of insanity (R. 2). At the second trial, on May 30, 1955, Defendant made a motion for permission to withdraw his former pleas in order to attack the legality of the indictment (R. 4-5). A motion to quash the indictment was also filed (R. 5). A motion to quash the venire was filed (R. 8). Defendant also filed a motion for appointment of a lunacy commission (R. 11). Another motion to quash the indictment was filed (R. 13). Defendant also filed a motion to set aside the entire jury box (R. 15), and a motion to declare void the composition sworn to try the Defend-

ant (R. 16). On page 17 of the transcript, we find a motion to allow the public to remain during the trial and a motion to exclude the public while the prosecutrix testified. Both motions were filed by counsel for Defendant. The judgment on pleadings appears on pages 18-20 of the transcript. All motions were denied.

Testimony was taken on the motion to quash the venire on the grounds of systematic exclusion of Negroes from juries in Montgomery County. The motion was denied and the case went to trial. The jury returned a verdict of guilty and fixed punishment at death (R. 20-21). Counsel orally moved the Court to set aside the verdict and the motion was denied (R. 21). The Court adjudged Defendant guilty (R. 21-22) and sentenced him accordingly (R. 22). The trial proceedings were reviewed by the Supreme Court of Alabama, which affirmed the judgment of conviction and the sentence imposed. (See **Jeremiah Reeves, Jr., vs. State of Alabama,** 264 Ala. 476, 88 So. 2d 561). On September 4, 1956, time for filing petition for certiorari was extended by Mr. Justice Black to November 17, 1956. The petition was granted on January 14, 1957.

VI.

STATEMENT OF FACTS

Since the major portion of the testimony deals with the motion to quash the venire, we will first set out that testimony.

We will then set out the testimony on the merits of the case.

Testimony on the Motion

In support of Defendant's motion, he offered the following witnesses:

Honorable Eugene W. Carter, Circuit Judge of Montgomery County, Alabama; and a member of the Board of Jury Supervisors of Montgomery County, Alabama, testified that as a member of the Board of Jury Supervisors, he regularly attended meetings; that the Board had gone through the County in search of a list of qualified jurors (R. 46); and that they had obtained a list of names from the Union Association of Colored People, as well as from the telephone directory, City directory and the voters' list (R. 46-47). He testified that the Board got names from stores or wherever people congregated and that names were secured from everyone possible (R. 47). He testified that a list had been obtained from the Old Civic Betterment Society, civic clubs and labor organizations; that six or seven Negroes were on the venire selected to try the instant case, and that one had been excused by agreement (R.48).

Judge Carter testified that there was no way of knowing from the cards drawn from the jury box whether a name was that of a white or colored man, except that the fact could sometimes be determined from the address on the card (R. 48-49).

He testified that some Negroes have served on grand juries in Montgomery County (R. 49). He described in detail the method of selecting grand juries: fifty names are drawn from the jury box; these persons are summoned and the names of those appearing are put in a hat; the hat is then covered by a handkerchief and eighteen names are drawn out in open

court. (R. 49-50). He stated that there was nothing on the cards to distinguish white from colored persons (R. 50-51).

It was Judge Carter's testimony that the Jury Supervisors tried to get men with good reputations, between the ages of twenty-one and sixty-five, who were residents of Montgomery County, and who were believed to be honest and upright and to have a certain amount of education (R. 52-53). If the Supervisors did not know the people selected, persons in the community would recommend them to the Board (R. 52). He further testified that it is necessary, under the law, for the occupations of the prospective jurors to be known (R. 53), and those who would be exempt under the law were not usually listed (R. 53). Judge Carter testified that the ratio of whites and Negroes in Montgomery County was approximately 60-40; that Negroes were not discriminated against by those selecting the names for the jury list (R. 54-56).

He testified that it was necessary to consider both the reputation and education of the prospective jurors and that an honest effort had been made to see that competent jurors were placed in the box, whether they were white or colored; there was no distinction in the card and that, as a matter of fact, there was no discussion as to whether a man was white or colored when his name was being considered for inclusion in the jury box (R. 56).

It was his testimony that the voting qualification was not necessarily the criterion for jury duty and some of the jurors were not voters (R. 56-57). Any person wanting to be on the jury list need only contact him and his name would be considered (R. 57).

He testified again that it could not be determined by looking in the jury book whether a man was white or colored, unless the person examining said book knew him personally or recognized the address (R. 60). He said that the Board tried not to put on anybody who was diseased, convicted of a crime involving moral turpitude, was a drunkard, a narcotic addict, or had been in the penitentiary (R. 61).

Judge Carter testified that one list of suggested names came from the head of the NAACP, and that poll lists, telephone directories, clubs, individuals and the City directories were used to get names (R. 61-62). He pointed out that there were six or seven Negroes on the venire for the instant trial (R. 63), and that he has seen colored men on juries trying white men in criminal cases (R. 63).

Honorable Walter B. Jones, for twenty years presiding Judge of the Fifteenth Judicial Circuit, testified that he had been a member of the Board of Jury Supervisors since its establishment (R. 65). He testified that there was no discrimination against Negroes and that there was no way of telling by looking at the card whether a man was white or colored (R. 66). He said that the court records were checked to determine the possibility of criminal records of prospects (R. 66), and that they were sometimes asked whether they could read or write (R. 66). Names are received from people calling in, writing, or visiting. The voting lists are also consulted and, of course, some of the jurors are known personally to the Supervisors (R. 67-68). The witness testified that he had not consulted social clubs, but had consulted civic clubs and had contacted a number of representative colored people for recommendations (R. 69); that whenever he saw

a Negro sitting on a jury, he tried to contact that Negro for more names (R. 69).

Judge Jones testified that the Supervisors had never refused or failed to put a person on the roll by reason of his color, race or creed (R. 72).

Judge Jones has been a Circuit Judge of the Fifteenth Judicial Circuit since 1920; his father was a Federal Judge and Governor of the State of Alabama, and Judge Jones, himself, was at the time of the trial President of the Alabama Bar Association (R. 71-72).

Honorable John R. Matthews, Clerk of the Circuit Court of Montgomery County, Alabama, is also a member of the Board of Jury Supervisors (R. 72). He keeps the records of the Board and helps select names.

He testified that he got names from individuals, poll lists, the City directory and the telephone directory, and that there was no discrimination against Negroes (R. 73). He had contacted Negroes for names and had also selected those known on the poll lists as Negroes. He had Negroes come to his office and go over the poll lists, but he had no idea of exactly how many names were in the jury box (R. 74). He testified that if he went through the jury roll, he could tell whether some were white or some were colored from personal knowledge, but could not distinguish all of the names (R. 75). There were Negroes on the jury panel the morning of the trial (R. 77).

Mr. Matthews testified that there was nothing on the jury roll to indicate whether a name was that of a colored man or white man (R. 76). He did not know of any venires where more than ten Negroes were

listed and he did not remember whether there were any Negroes on the grand jury which indicted Defendant (R. 78-79). He testified that the box was last refilled in January of 1955 (R. 80), after this case had been argued before the Supreme Court of the United States (R. 81).

He said that he had asked one J. E. Pierce, a colored man, for names and had received a list of between thirty and fifty, after requesting it two or three times (R. 82-83); that he has asked one D. Caffey, a Negro leader, for a list of names four or five times, but had never received one (R. 84); a Negro worker in the Judge of Probate's office brought a list, as did Morris Smith, a representative of an insurance company; one Orran Campbell, a barber, had been asked several times but had never given any names (R. 83).

He stated that there was no discrimination against Negroes and that the members of the Board had done the best job they could (R. 84-85). He further testified that the cards from the jury box contained only the man's name, address, occupation, place of business, and a number which corresponded with a number opposite the same name on the jury roll (R. 86).

Mr. Charles M. Pinkston, an attorney, testified that he had some criminal practice, but had not had much two years prior to the trial (R. 90). He remembered having Negroes on his own juries (R. 90).

Mr. G. A. Mosley, the former Sheriff of Montgomery County and presently Bailiff of the Court, testified that a good many grand juries had Negroes on them. In fact, there had been as many as four on one grand jury. He had seen Negroes sitting on juries

in criminal cases, and remembered one with five on the jury and several with three (R. 91-92).

Mr. Vaughan Hill Robison, an attorney, testified that he had tried cases before juries containing Negroes (R. 93). He also testified that as many as two or three served on cases which he had tried (R. 93). It was his testimony that the number of Negro jurors appearing for jury duty had increased during the past five years and that he saw no evidence of discrimination (R. 94).

Mr. Walter J. Knabe, an attorney, testified that he had very little criminal practice, but that it was usual for Negroes to be on civil juries, and it was his opinion that there were more Negroes on juries in Montgomery County than there were in the Federal Court in Montgomery (R. 96-97).

Mr. John Blue Hill, an attorney with criminal practice, testified that he had seen Negroes serving on the juries (R. 98), and that in one case where he defended a white man, there was a Negro on the jury. On another occasion, he defended another white man with a Negro on the jury (R. 98-99). He further testified that he knew of Negroes being on grand juries in Montgomery County (R. 99).

Mr. Mac Sim Butler, Sheriff of Montgomery County and former Court Bailiff, testified that on at least two occasions, he had seen as many as five Negroes serving on a jury and that many times, he had seen three (R. 102-103). He further testified that since becoming Bailiff in 1948, it was the usual thing to see Negroes on a petit jury (R. 103), and that Negroes were frequently found on the grand juries, the ratio

sometimes being three out of eighteen (R. 104). It was his testimony that the number had increased in the past seven years (R. 104).

The Defendant put several Negroes on the stand as witnesses. These witnesses testified that they had never been called for jury duty or that they had been called but once. It was shown that many of these witnesses were Pullman porters who were out of town a great deal. They also testified that they had never heard or seen Negroes on juries in Montgomery County. It was shown, however, that these witnesses had spent very little, if any, time around the Court House (R. 106 through 173).

Mr. William F. Thetford testified on behalf of the State. He detailed the way in which grand juries are selected and his testimony paralleled that of Judge Carter in that respect (R. 184-185). He also testified as to the manner of drawing petit juries. He stated that it was not unusual to have Negroes on the grand jury and that Negroes had served on over one-half of the grand juries of Montgomery County in the four years prior to Defendant's second trial. He testified that if a Negro was on the panel of fifty names drawn for grand jury service and if that Negro appeared and was not excused, his name was put in the hat, and if his name was drawn, he served on the grand jury. He had tried three cases the week prior to Defendant's trial and there had been two Negroes on each jury (R. 186-187). He testified that in his service as Circuit Solicitor, he had never seen a criminal panel without at least one Negro on it and that many times Negroes served on criminal juries (R. 187). It was his further testimony that the defendant usually strikes Negroes rather than the solicitor (R. 187). He testi-

fied that he knew of no agreements with defense attorneys that Negroes would be stricken and that, as a matter of fact, he had prosecuted even capital cases involving white defendants where Negroes were on the jury (R. 188) The witness was shown the jury list for the day and testified that he recognized some of the names as being those of Negroes ((R. 202).

The counsel for Defendant introduced the United States Census Reports, indicating that in 1950, out of 40,144 males in Montgomery County over the age of twenty-one, 25,021 were white and 15,123 were non-white (R. 199-200).

Testimony on the Merits

Mabel Ann Crowder, the prosecutrix, testified that on July 28, 1952, she was sitting in her bedroom when she looked in the mirror and saw the Defendant behind the door (R. 229). He was dressed in blue trousers and a shirt with gold or yellow design. She turned around and told him to get out (R. 230). She started screaming; the Defendant told her to shut up, and choked her to stop her from screaming (R. 230-231). Holding his hand over her throat, he pushed her across the foot of the bed and, while she was struggling and striking at him, he had intercourse with her. After telling her that if she told anyone she would be laughed at, he started hitting her (R. 231-232). According to the testimony of the witness, the Defendant held her by the hair and beat her head on the floor (R. 232). The witness testified that she did not remember his leaving and she came to with a small rug over her head. She then went to a neighbor's house (R. 233). She was taken to the Maxwell Air Force Base Hospital and next saw the Defendant

at the City Hall, where she identified him. She testified that he did not have a mustache at the time of the crime (R. 233-234). She positively identified him at the trial, stating that he was heavier and now had a mustache (R. 234). She further testified that during the beating, the Defendant told her that he ought to kill her (R. 234).

Mrs. Lois Struchko, a next door neighbor to Mrs. Crowder, testified that Mrs. Crowder came to her home about 12:45 P.M., on the day of the crime, crying and bleeding from her head. She complained of the rape to the witness. The witness put Mrs. Crowder on a sofa and gave her some ammonia in water (R. 240-241). She administered other first aid to the victim as well. The witness then took Mrs. Crowder to the Hospital after the police had given their permission (R. 241).

W. R. Clarke testified that on the day of the crime, between 12:30 and 1:00 P.M., he saw the Defendant at the corner of National and Cleveland Avenues, near the home of Mrs. Crowder. The Defendant was running toward Fairview Avenue and signaled for a ride (R. 243-244). The witness, who was stopped at the intersection, gave Defendant a ride. Defendant was drssed in blue pants, a flowered sport shirt and a straw hat. He rode as far as Cleveland and Fairview Avenues and said he was going to town. The witness positively identified the Defendant at the trial (R. 244). The witness testified that he reported the incident to the police the following morning, after he had read of the crime in the paper (R. 245). He later identified the Defendant at the jail, and Defendant did not have a mustache when seen by Clarke on the day of the crime (R. 246).

Colonel George Harold Kojac's testimony on the former trial was introduced, after proof that he was out of the jurisdiction of the Court. This testimony concerned the examination of Mrs. Crowder immediately following the crime (R. 307-313).

Cardis Nathaniel Johnson testified that he was the medical technician who performed certain tests on smears taken from Mrs. Crowder by Dr. Kojac, and that he found live sperm cells present (R. 314).

The Solicitor then introduced Major Virgil R. Zarling's testimony on the former trial, after proof that he was out of the jurisdiction of the Court. This testimony dealt with the physical examination of Mrs. Crowder (R. 319-324), and substantiated her description of injuries received at the time she was raped.

Clyde E. Jones, a City Detective, testified that he went to the Struchko home and saw Mrs. Crowder on the day of the crime. He testified that she described her assailant as a colored man wearing blue pants and a flowered shirt (R. 330).

Carnella Reeves, the Defendant's mother, testified that when she came home on November 10, 1952, she found that the police had been there and searched her home and had arrested her son, Jeremiah (R. 337). She testified that she was not allowed to see him at Kilby Prison until Thursday of that same week (R. 338). She testified that, although her son went part of the way through the eighth grade and had good grades (R. 340), he acted nervous and peculiar since he had had a lick on his head as a child (R. 340). She further testified that the Defendant never wore a hat and that, in her opinion, he was insane (R. 342).

The Defendant then offered a number of witnesses testifying to his church attendance, his peculiarities and his good reputation (R. 347-367). Some of these witnesses also testified that he always had a dark upper lip and never wore a hat (R. 365).

The father of the Defendant, Jeremiah Reeves, Sr., testified that on November 10, 1952, his son was arrested by the police and that when he came home, the police had been there. They came back later and he asked to see his son and was told he could not (R. 370). He further testified that he went to Kilby Prison and was not allowed to see him there until Friday of that week (R. 371). He testified that the Defendant had worn a mustache since he was fourteen years old (R. 371), and that he owned no hat and no blue shirt with yellow print (R. 371-372). According to the witness, the Defendant went to church regularly and sang in the choir (R. 372).

Defendant then offered other witnesses as to his good reputation and church activities (R. 376-384).

The testimony of Rebecca Mitchell, now deceased, was read into the record from the transcript of Defendant's former trial (R. 384). This testimony was to the effect that on the day of the crime, the Defendant was at her house from 11:00 A.M. until 4:00 in the afternoon, watching or playing a game of dominoes. She also testified as to his good reputation (R. 385-386).

The Defendant took the stand in his own behalf and testified that he was picked up on July 28, 1952, along with several others, and taken to the police station where he was later released (R. 393-394). He said

that he never saw Mrs. Crowder before the time he saw her at the City Hall in November of 1952 (R. 394). He denied the crime and denied that he had ever been in her home (R. 394-395). The Defendant testified that he played the drums in a dance band the night before the crime, slept late the next day and did not leave the immediate vicinity of his home (R. 395-396). He testified that on the day he was arrested in November, 1952, he was taken to the County Jail, where he stayed for five or six minutes before he was taken to Kilby Prison and put in the death cell. He testified that he was frightened and threatened, and that he stayed at Kilby Prison from Monday to Thursday before he saw his mother (R. 397-398); that he asked to see his mother and father and a lawyer, but these requests were refused (R. 398). He testified that on the way to Kilby Prison he was accused of committing several rapes (R. 412).

John Golthy testified that he had a dance orchestra which played on Sunday night, July 29, 1952, at the Sepia Club, and that the Defendant played the drums and sang with the orchestra from 9:00 until 1:00 o'clock on that night (R. 415-416). He testified that on the next day, he saw Defendant about 10:00 o'clock in the morning, and that Defendant told him he was going to school. He testified that Defendant always had a little something on his upper lip " . . . and this mustache now can be seen a little bit." (R. 416). He further testified to the good reputation of the Defendant (R. 417).

VII.

BRIEF AND ARGUMENT

1.

Ordinarily, an accused need not be re-arraigned after reversal of a cause unless the indictment is changed by amendment or otherwise.

Thomas vs. State, 225 Ala. 632, 53 So. 2d 340
Thomas vs. State, 190 P. 711 (Okla.)
Hamit vs. State, 275 P. 361 (Okla.)
Steen vs. State, 242 S. W. 1047 (Tex.)
State vs. Farrell, 28 S. E. 2d (N. S.) 560
State vs. Hewitt, 34 S. E. 2d 764 (S. C.)

The Defendant complains that he was deprived of his constitutional right to due process and equal protection by the trial court's refusal to hear his motion to quash the indictment and re-indict and re-arraign him, after his previous conviction had been reversed by the Uited States Supreme Court.

The record will show that Reeves was arrested on November 10, 1952, indicted November 14, arraigned November 15, and tried November 26; he was represented on arraignment and trial by counsel of his own choice, whose ability, industry and integrity has not been questioned in either appeal.

The first trial and conviction was affirmed by the Supreme Court of Alabama and was taken to the United States Supreme Court on writ of certiorari; this Honorable Court reversed, and although the question of systematic exclusion of Negroes from the jury was raised, the reversal was apparently based upon

the introduction of an illegal confession. See **Reeves vs. Alabama,** 348 U. S. 891, 99 L. Ed. 700, for memorandum decision. No change was made in the indictment, either by amendment or by any other means. In such a case, an accused need not be re-arraigned upon the second or subsequent trials of his case. In **Thomas vs. State,** 190 P. 711-17 (Okla.), a situation similar to the one at bar arose. The defendant in that case argued that he should have been re-arraigned on his second trial. The Criminal Court of Appeals of Oklahoma determined that a re-arraignment was not necessary, even though the record of the first trial did not conclusively show that he had been properly arraigned on that trial. In the instant case, the record affirmatively shows that the Defendant was arraigned and pleaded not guilty on his first trial (R. 2). The rule in most jurisdictions is that when a case has been reversed, it is not necessary that the defendant be again arraigned. Our courts in Alabama have placed a limitation upon this rule, but this limitation is not material under the facts presented here. In our jurisdiction, if the indictment is changed by amendment or by the fact that the earlier conviction acts as an acquittal of a higher degree of the offense, the better practice is to arraign the defendant prior to the second trial. See **Thomas vs. State,** 255 Ala. 632, 53 So. 2d 340. Here, of course, the indictment has not been changed in any manner.

We contend, therefore, that once the Defendant pleaded to the charge aganist him, the State was not required to re-indict or re-arraign him.

2.

Defendant was not deprived of his constitutional rights by the trial court's refusal to allow him to with-

draw a plea of not guilty entered on arraignment to permit him to attack the indictment on grounds of systematic exclusion of Negroes from the Grand Jury, or to inquire into the nature and extent of the evidence presented to the Grand Jury.

Title 15, Sections 278, 279, 286, Code of Alabama, 1940

Clark vs. State, 240 Ala. 65, 197 So. 23

Costello vs. United States, 305, U. S. 359, 100 L. Ed. 397

Clark vs. State, 239 Ala. 380, 195 So 260

Whitehead vs. State, 206 Ala. 288, 90 So. 351

Michel vs. Louisiana, 350 U. S. 91, 100 L. Ed. 83

Reese vs. Georgia, 350 U. S. 85, 100 L. Ed. 77

The Defendant alleges that his rights were violated by the trial court's refusal to let him withdraw his pleas of not guilty and not guilty by reason of insanity, so that he might attack the validity of the indictment on the grounds that it was based on an illegal confession and that Negroes were systematically excluded from the Grand Jury. In Title 15, Sections 278, 279 and 286, Code of Alabama, 1940, we find the provisions setting out the method of attaching an indictment.

Section 278, supra, provides that the proper method is by plea in abatement. Sections 279 and 286, supra, provide that in all cases, such a plea in abatement must be filed before the plea to the merits. The Defendant's motion was filed on his second trial, some two and a half years after his arraignment and plea to the merits (R. 5). The record on the first appeal, however, shows that Defendant's counsel filed a simi-

lar motion to quash the indictment on November 26, 1952 (R. of Jeremial Reeves, Jr., vs. State of Alabama, #120 October Term 7954, page 2). The motion to quash should have been filed on November 15; Defendant could have filed it then had he so desired; however, it was filed more than ten days after the Defendant was arraigned and entered his pleas of "not guilty" and "not quilty by reason of insanity"; it was overruled by the Court on the well-established practice in Alabama of requiring all pleas in abatement to be filed before pleading to the merits (**Whitehead vs. State,** 206 Ala. 288, 90 So. 351). The requirement is reasonable and tends to promote an orderly system of properly and fairly disposing of criminal proceedings. The record on the first appeal further shows that Defendant was served with a copy of the indictment and venire on November 17, 1952 (R. - first appeal, page 13) according to order of the court made on the day of arraignment, November 15, 1952 (R. - first appeal, page 2). This is the procedure prescribed by Title 30, Section 63, Code of Alabama, 1940, which requires the special venire to be drawn in the presence of the Defendant when he is arraigned and a copy of this venire and of the indictment to be served upon him at least one full day before trial. Defendant's counsel had from November 15, the date of arraignment, until November 26, the date of trial to ask to withdraw the pleas to the merits and to be allowed to file pleas in abatement. In the discretion of the Court this could have been done; however, after ten days the Court apparently saw no justification in the motion to quash and certainly on the second trial two and a half years later there is no justification for allowing the motion.

The Supreme Court of Alabama correctly points out that the indictment shows a list of witnesses who apparently testified before the Grand Jury, including the prosecutrix (R. 448); and the Solicitor testified that he presented evidence to the Grand Jury (R. 192). (See also statement of Solicitor, R. 207). Where an investigation was made by the Grand Jury, the sufficiency of the evidence adduced cannot be raised by a motion to quash the indictment, even if filed at the proper time, which was not done in this case. See **Clark vs. State,** 240 Ala. 65, 197 So. 23, and **Costello vs. United States,** 305 U. S. 359, 100 L. Ed. 397.

In **Clark vs. State,** 239 Ala. 350, 195 So. 260, the above statutes were approved by the Supreme Court of Alabama and certiorari was denied by this Court. See **Clark vs. Alabama,** 311 U. S. 688, 85 L. Ed. 445.

This Honorable Court has recently had occasion to deal with a similar problem. In **Michel vs. Louisiana,** 350 U. S. 91, 100 L. Ed. 84, the defendant was indicted on February 19, 1953, and was presented to the court for arraignment on February 23, 1953. The arraignment was continued in order that counsel might be secured. In Louisiana the defendant is required to object to the grand jury before three judicial days after its term, and in any case, before arraignment. The opinion holds that such limitation was not a denial of due process, remarking that a motion to quash is normally a short, simple document, easily prepared in a single afternoon. It then appeared that the term of the grand jury which indicted that defendant expired March 2, 1953. The motion to quash the indictment was filed on March 9, five judicial days after the expiration of the term of the grand jury. Counsel

for that defendant contended that he had not been formally appointed until March 5. The Supreme Court of Louisiana had held that he had been appointed on March 2, and this Court refused to overturn the findings of the Louisiana Court. It will be noted in Michel that the ground for challenge of the indictment was the systematic exclusion of Negroes from the grand jury. The State courts found that the question had been waived by the failure to file the motion to quash at the proper time. This court affirmed that finding.

Under Alabama practice a comparable situation is found in requiring the indictment and copy of the venire to be served on a defendant at least on full day before the trial (Title 30, Section 63, Code of Alabama, 1940). A careful search of our cases fails to reveal that any defendnt has ever successfully contended that one day's notice of the indictment and venire was a denial of due process.

We submit, therefore, that under Alabama statutes and practice, the Circuit Court of Montgomery County, Alabama, properly refused to permit the withdrawal of the pleas so that the motion might be filed.

3.

The lack of proportional representation of Negroes on the jury does not constitute discrimination under the facts presented.

Title 30, Sections 20, 21, 24, Code of Alabama, 1940

Brown vs. Allen, 344 U. S. 443, 97 L. Ed. 469
Akins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692
Kennedy vs. State, 213 S. W. 2d 132 (Tenn.), cert. den. 333 U. S. 846, 92 L. Ed. 1129
People vs. Price, 20 N. E. 2d 61 (Ill.),

cert. den. 308 U. S. 551, 84 L. Ed. 463
Thomas vs. Texas, 212 U. S. 278, 53 L. Ed. 512

The Defendant filed a motion to quash the venire on the ground that Negroes were systematically excluded from the jury rolls of Montgomery County. Testimony was heard on this motion. The testimony is set out at length in the record, of course, and is summarized for the convenience of this Court in our Statement of Facts.

The courts of Alabama and the Supreme Court of the United States have held that the lack of proportional representation alone does not constitute discrimination. In **Brown vs. Allen,** 344 U. S. 443, 97 L. Ed. 469, defendant contended that discrimination was proved by evidence that 30% of those eligible as jurors were Negroes, while only 7% of the names in the jury box were names of Negroes. The majority of this court held that no discrimination against Negroes in the selection of the jury had been shown.

In **Thomas vs. Texas,** 212 U. S. 278, 53 L. Ed. 512, the Court, in finding no evidence of discrimination, remarked that the evidence showed that those responsible for obtaining jurors had fairly and honestly attempted to carry out their duties. We submit that such is the case here, as shown by the testimony of the various members of the Board of Jury Supervisors of Montgomery County.

The case of **Cassell vs. Texas,** 339 U. S. 282, 94 L. Ed. 839, cited by Defendant, is no basis for reversal of the case at bar. In that case the majority opinion held that the statement of the jury commissioners—that they chose only whom they knew and that they knew no eligible Negroes in the area—proved discrimination.

There is no testimony of such statements here. Although the record indicated that the Board's acquaintance among Negroes was not so extensive as among whites, the testimony shows conclusively that personal acquaintance was not the basis of selection. The record shows that every effort was made to obtain names of Negroes for the jury box and that no man had ever been turned down because of his race. It will be noted that all of the officers of the court and some of the attorneys of the Montgomery Bar testified that they were accustomed in recent years to seeing Negroes serving on grand and petit juries in Montgomery County—even more than were found on the venires of our Federal Courts. The record also indicates that a number of Negroes were on the venire selected for this Defendant's trial. The testimony shows that there is no method of determining from the cards in the jury box whether a man is white or colored.

A further finding in **Cassell vs. Texas,** supra, was that no more than one Negro was ever on a panel at one time. (See the concurring opinion of Mr. Justice Frankfurter.) This evidenced a design to limit the number of Negroes serving. In the case at bar, varying numbers were shown to have served from time to time with some occasions where no Negroes served. We submit that there was no evidence of a scheme or plan to pay token tribute only to the requirements laid down by the Supreme Court of the United States.

It will be noted that although the court officials and attorneys testified that many Negroes served on juries in Montgomery County, Alabama, the witnesses presented by the Defendant testified that they had seldom, if ever, heard of or seen a Negro on a Mont-

gomery County jury. We deem it sufficient to point out that cross-examination reveals that these witnesses seldom, if ever, had occasion to witness a criminal proceeding, and for the most part, were out of town a great amount of the time. Thus, they had no opportunity to know whether, in fact, Negroes did serve on these juries. It is also interesting that their apparent feeling is that Negroes should be tried by Negroes, in light of the Solicitor's testimony that Negro jurors were usually struck by Negro defendants.

We contend that the evidence shows that the trial court properly ruled on the motion to quash the venire.

4.

Matter made subject of timely and reasonable inquiry by court or counsel during examination of prospective jurors does not necessarily have to constitute ground for challenge for cause and the latitude allowed is within the sound discretion of the trial court.

Title 30, Sections 63, 64, Code of Alabama, 1940

Rose vs. Magro, 220 Ala. 120, 124 So. 296

Redus vs. State, 243 Ala. 320, 9 So. 2d 914, cert. den. 318 U. S. 774, 87 L. Ed. 1143; rehearing den. 318 U. S. 802, 87 L. Ed. 1166

Burgess vs. Singer Mfg. Co., 30 S. W. 1110 .

The Defendant complains that the remarks of the Solicitor, in asking the Court to present certain questions to the jury (R. 210-211), were prejudicial to his rights. The Solicitor asked that the Court ask the venire whether any were members of the NAACP.

He also stated that it was his information that the case was being financed by that group.[1] It is not nec-

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1. The record, pages 214-215, show the following typical examination of the jurors by the Court:

THE CLERK: Elbert R. Hughes; A. Knox Jackson; Leonard H. Jacobs; Alex P. Long; James E. Lott.

THE COURT: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

A. KNOX JACKSON: I am against capital punishment.

THE COURT: You are excused.

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

JAMES E. LOTT: I am a member.

THE COURT: If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

JAMES E. LOTT: No, Sir.

THE COURT: Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

essary that the questions asked the jury venire bring forth answers which provide a ground for challenge for cause. It is proper to have questions which might bring out matters which would enable the party to select an unbiased and unprejudiced jury. It goes without question that attorneys may wish to omit certain persons from the jury, even though they might not be able to challenge the jurors for cause. To give counsel the opportunity for intelligent selection of the final twelve men, wide latitude is allowed in the questions asked on voir dire.

The Code of Alabama provides that in all civil and criminal cases, either party shall have the right to examine jurors as to their qualifications, interest, or bias that would affect the trial of the case, and shall have the right, under the direction of the Court, to examine said jurors as to any matter that might tend to affect their verdict. (Title 30, Sec. 52, Code of Alabama 1940).

The Solicitor asked merely that the jurors be qualified as to membership in the NAACP (R. 210). Upon objection by Defendant the Solicitor then stated his reason—that he understood the defense was being financed by the NAACP. We submit the Solicitor was justified, since the name of the General Counsel of the NAACP appears on the brief filed in the first appeal. The record shows that three jurors admitted membership in the NAACP when they were being qualified (R. 213, 215) and that such information was legitimately obtained and was useful to the State in determining whom to strike from the venire.

In **Rose vs. Magro,** 220 Ala. 120, 124 So. 296, the Supreme Court of Alabama has held that the subject of inquiry need not be grounds for challenge for cause

and that in the discretion of the Court parties have the right to ask such questions as will enable them intelligently to select acceptable jurors. The opinion approves inquiry as to whether or not a juror is employed by the City, or is a Mason or a Methodist, a member of a union—all, even though such membership would in no way disqualify the juror. The general principles set out in this case are cited with approval in **Redus vs. State,** 243 Ala. 320, 9 So. 2d 914, in which certiorari was denied by this Honorable Court (**Redus vs. State,** 318 U. S. 802, 87 L. Ed. 1166).

The Court's attention is also directed to **Burgess vs. Singer Mfg. Co.,** 30 S. W. 1110, where the Court permitted questions regarding whether or not prospective jurors were members of the Knights of Pythias or the International Order of Odd Fellows.

5.

Defendant was not deprived of due process of law by the action of the trial court in excluding the general public from the trial proceedings.

Section 169, Constitution of Alabama, 1901

Title 15, Section 320, Code of Alabama, 1940

Scott vs. State, 249 Ala. 304, 30 So. 2d 689
Keddington vs. State, 19 Ariz. 457, 172 P. 273
Robertson vs. State, 64 Fla. 437, 60 So. 118
Reagan vs. United States, 202 Fed. 488
Melanson vs. O'Brien, 191 Fed. 2d 963
Sawyer vs. Duffy, 60 Fed. Sup. 852
Benedict vs. People, 23 Colo. 126, 46 P. 637

Commonwealth vs. Blondin, 324 Mass. 564, 87 N. E. 2d 455

Moore vs. State, 151 Ga. 648, 108 S. E. 47

People vs. Swofford, 65 Cal. 223, 3 P. 809

Sallie, et al, vs. State, 155 Miss. 547, 124 So. 650

Baker vs. Utrecht, 161 Fed. 2d 304

State vs. Callahan, 100 Minn. 63, 110 N. W. 342

Cooley on Constitutional Limitations (8th Ed.), p. 647

Wigmore on Evidence (3rd Ed.), Sec. 1835

When this case finally reached the stage for taking testimony on the merits, the Court excluded the general public from the trial (R. 223-224). The Court permitted the following persons to remain: Defendant, counsel representing the parties, the court officers, the attorneys, members of the press, radio, television or other news gathering services, uniformed officers, members of the bar, Defendant's pastor, members of the family and relatives of the Defendant.

We contend that there was no error in this ruling. Our Constitution provides that the court may, in its discretion, exclude from the courtroom all persons not necessary in the conduct of the trial, in cases of this sort (Section 169, Constitution of Alabama, 1901). The Legislature has also provided for this same exercise of discretion (Title 15, Section 320, Code of Alabama, 1940). The trial court's action in excluding all but the above-listed persons was clearly not error. Similar actions have been upheld in many courts throughout our Country. This Court's attention is particularly invited to the following cases:

Reagan vs. United States, 202 Fed. 488, 44 L. R.

A. (N. S.) 583, (9th Cir. 1913) (Conviction in District Court of Alaska for rape, courtroom cleared of all except court officials, witnesses, and members of the bar—Affirmed); **Melansen vs. O'Brien,** 191 Fed. 2d 963, (1st Cir. 1951) (Order denying petition for writ of habeas corpus vacated on other grounds); **Sawyer vs. Duffy,** 60 Fed. Sup. 852 (D. C. Cal. 1945) (Conviction in California court of exciting lust of child under fourteen. Court cleared of spectators—Affirmed); **Benedict vs. People,** 23 Colo. 126, 46 P. 637 (1896) (Conviction in Colorado court of infamous crime against nature. Court cleared of all except court officials, members of bar, law students, witnesses, and defendant's family—Affirmed); **Commonwealth vs. Blondin,** 324 Mass. 564, 87 N. E. 2d 455 (1949) (Conviction in Massachusetts court for rape. Court cleared of all except court officials, members of bar, witnesses, stenographers and members of press—Affirmed); **Keddington vs. State,** 19 Ariz. 457, 172 P. 273, (Conviction in Arizona court of causing the dependency of a girl. Court cleared of all except court officials, members of bar, witnesses, family of accused, and members of press—Affirmed); **Moore vs. State,** 151 Ga. 648, 108 S. E. 47 (1921) (Conviction in Georgia court of rape. Court cleared of all except court officials, members of the bar, family of accused, members of press—Affirmed); **People vs. Swofford,** 65 Cal. 223, 3 P. 809 (1884) (Conviction in California court of abducting a girl under age for prostitution. Court cleared of all except court officials and persons connected with the case—Affirmed); **Robertson vs. State,** 64 Fla. 437, 60 So. 118 (1912) (Conviction in Florida court of manslaughter in causing the death of a young woman by causing her to miscarry or abort an unborn child. Court cleared of all except court officials, members of the bar, wit-

nesses, family of accused—Affirmed); **Sallie, et al. vs. State,** 155 Miss. 547, 124 So. 650 (1929) (Conviction in Mississippi court for attempt to rape. Court cleared of all spectators—Affirmed).

Certainly, an accused is protected from oppression and arbitrary action so long as trained and discriminating newspaper reporters are present, along with his family, his pastor, and members of the bar. See **Keddington vs. State,** 19 Ariz. 457, 172 P. 273.

VIII.

CONCLUSION

Respondent has met the objections raised by Petitioner.

The reversal of Petitioner's prior conviction does not require that he be re-indicted or re-arraigned; neither the composition of the Grand Jury which returned the indictment nor the evidence which it heard can be inquired into by motion to quash or plea in abatements entered more than two years after pleading to the merits.

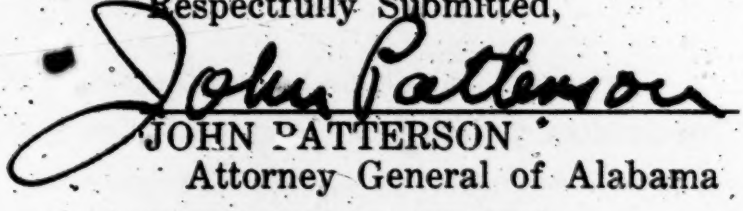
There has been no proof of systematic exclusion of Negroes from the Grand or Petit Juries in Montgomery County, Alabama; on the contrary, the evidence conclusively shows that the jury box was filled and the venires drawn without regard to race or color.

The Petitioner was afforded a public trial as required by the Constitution of Alabama and of the United States.

Due process of law has been afforded the Petitioner at every stage of his trial; due regard for the

laws and judicial procedures of Alabama require that the judgment below should be affirmed.

Respectfully Submitted,



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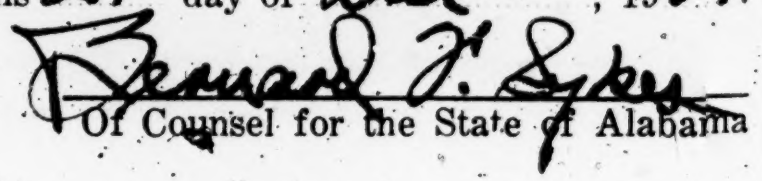
IX.

CERTIFICATE

This is to certify that I have this day served a copy of the foregoing brief and argument upon Honorable Peter A. Hall, one of the attorneys for Petitioner, by placing a copy in the United States mail, postage prepaid, properly addressed to him at 1630 Fourth Avenue, North, Birmingham, Alabama.

On this 21 day of Dec, 1957.



Of Counsel for the State of Alabama